



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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SECRETARIAT

SEP 25 3 51 PM '00

AGENDA ITEM

For Meeting of: 9-28-00

SUBMITTED LATE

September 25, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrken *[Signature]*
Staff Director

FROM: Lawrence M. Noble *[Signature]*
General Counsel

N. Bradley Litchfield *[Signature]*
Associate General Counsel

Jonathan M. Levin *[Signature]*
Senior Attorney

SUBJECT: Draft AO 2000-26

Attached is a proposed draft of the subject advisory opinion which is subject to consideration under the expedited 20-day advisory opinion procedure. 2 U.S.C. §437f(a)(2); 11 CFR 112.4(b). The 20th day is October 2, 2000.

The draft opinion is being circulated as a late document for the September 28 agenda.

Attachment

2
3 Joel Deckard
4 Citizens for Deckard
5 4263 Losco Road
6 #1326
7 Jacksonville, FL 32257

DRAFT

8
9 Dear Mr. Deckard:

10 This responds to your letter dated September 5, 2000, requesting an advisory
11 opinion concerning the application of the Federal Election Campaign Act of 1971, as
12 amended ("the Act"), and Commission regulations to the payment by a State party
13 committee to a Federal candidate of an amount equal to a State party assessment that the
14 candidate previously paid to the State.

15 ***Background***

16 You are the Reform Party nominee in the State of Florida for the United States
17 Senate, and Citizens for Deckard ("the Deckard Committee") is your principal campaign
18 committee.¹ Florida State law requires that each person seeking to qualify for the ballot
19 for nomination or election to any office (except for persons who wish to file by the
20 petition method) shall pay a qualifying fee to the Florida Department of State, consisting
21 of a filing fee, an election assessment, and a party assessment. The qualifying fee totals
22 six percent of the annual salary of the office sought, including two percent of the salary
23 for the party assessment. Fla. Stat. Ann. §99.092 (West 2000). The qualifying fee must
24 be paid between 120 and 116 days prior to the primary (held this year on September 5).
25 Fla. Stat. Ann. §99.061(1). The Department of State must remit 95 percent of the party
26 assessment to the appropriate State party committee within 20 days of the close of the
27 qualifying period² and must remit the other five percent to the party committee by the
28 date of the primary. See Fla. Stat. Ann. §§99.103(2) and 215.20.³

¹ Citizens for Deckard filed its statement of organization with the Commission on May 21, 1999.

² The Department of State also imposes a seven percent surcharge on the party assessment which it does not remit to the party committee but retains as revenue for the State. See Fla. Stat. Ann. §215.20.

³ As an alternative to paying the party assessment to the Department of State, the candidate may pay the assessment directly to the party. Then, when the candidate pays his filing fee and election assessment, he submits to the State the original or signed duplicate of the receipt for the party assessment. See Fla. Stat. Ann. §99.092(1); see also §99.021(b).

1 In early May 2000, the Deckard Committee paid a party assessment to the
2 Department of State totaling \$2,542.⁴ The Department of State remitted \$2,542 to the
3 Florida Reform Party Executive Committee ("State Committee") in June 2000.⁵ On July
4 1, the State Committee sent a check in that amount to the Deckard Committee. At the
5 time, both the State Committee and the Deckard Committee considered this to be a return
6 to the candidate of the assessment levied on behalf of the party and exempt from the
7 definition of "contribution" because the party assessment was a ballot access fee.⁶

8 After discussions in August with the Commission's Office of General Counsel as
9 to how to characterize and report the payment to the Deckard Committee, the treasurer of
10 the State Committee sent you a letter, dated August 25, stating his belief that the July 1
11 payment was an excessive contribution to the Deckard Committee and that the amount in
12 excess of the Act's limits should be refunded to the State Committee. You ask whether
13 the July 1 payment from the State Committee to the Deckard Committee should be
14 characterized as a contribution and thus subject to the Act's limits. You state that,
15 pending the issuance of an advisory opinion, the Deckard Committee is withholding
16 return of the amount in excess, but will refrain from spending that amount.

17 ***Act and Commission regulations***

18 Under the Act and Commission regulations, the term "contribution" is defined as
19 any gift, subscription, loan, advance, or deposit of money or anything of value made by
20 any person for the purpose of influencing any election for Federal office, and the term
21 "expenditure" is defined as any purchase, payment, distribution, loan, advance, deposit or
22 gift of money or anything of value, made by any person for the purpose of influencing
23 any election for Federal office. 2 U.S.C. §431(8)(A)(i) and 431(9)(A)(i); 11 CFR
24 100.7(a)(1) and 100.8(a)(1). The Act and regulations provide for exceptions to these
25 terms with respect to certain payments related to ballot access. An exception to the term
26 "contribution" applies to payments made by a candidate or his authorized committee as a

⁴ Along with the party assessment, Citizens for Deckard also paid the surcharge on the party assessment (see footnote 2), a filing fee, and an election assessment. The total payment made was \$8,202.

⁵ It appears that the Department of State remitted the full amount of the party assessment in June and not just 95 percent.

⁶ Neither the Deckard Committee nor the State Committee, which registered with the Commission on August 25, 2000, has filed a report covering the July 1 payment.

condition of ballot access, and to payments received by any political party committee as a condition of ballot access. 2 U.S.C. §431(8)(B)(xiii); 11 CFR 100.7(b)(18). An exception to the term "expenditure" applies to amounts transferred by a party committee to another party committee or payments made to the appropriate State official of fees collected from candidates or their authorized committee as a condition of ballot access. 2 U.S.C. §431(9)(x); 11 CFR 100.8(b)(19).

Contributions to a candidate and his authorized committees by a State party committee that does not qualify as a multicandidate committee may not exceed \$1,000 with respect to any Federal election. 2 U.S.C. §441a(a)(1)(A); 11 CFR 110.1(b)(1).⁷ If a contribution by a non-multicandidate committee to a candidate's authorized committee exceeds the limit of section 441a(a)(1)(A) and is deposited by the authorized committee, the authorized committee must either refund the excessive amount to the contributor within 60 days of the treasurer's receipt, or the contributor may be able to provide a written, signed redesignation of a portion of the contribution for a different election, which the authorized committee must receive within that 60 day time period. 11 CFR 103.3(b)(3) and 110.1(b)(5)(ii)(B); *see also* 11 CFR 110.1(b)(5)(i)(A). If the excessive contribution is deposited in the authorized committee's account before a refund is made or a redesignation is received, the committee may not spend those funds; it must either deposit the funds in a separate account established for illegal contributions or maintain sufficient funds in its regular campaign account to make all such refunds. 11 CFR 103.3(b)(4).

Analysis

Under the exceptions set out in the Act and regulations, the payment of the party assessment fee by the Deckard Committee to the Florida Department of State, which was then remitted to the State Committee, would not be an expenditure by the Deckard Committee or a contribution by the Deckard Committee to the State Committee. 2

⁷ The limit for contributions by a multicandidate committee to a candidate and his authorized committees with respect to a Federal election is \$5,000. 2 U.S.C. §441a(a)(2)(A); 11 CFR 110.2(b)(1). To qualify as a multicandidate committee, a State party committee must be a political committee that has registered with the Commission for at least six months and has received contributions from more than 50 persons. 2 U.S.C. §441a(a)(4); 11 CFR 100.5(e)(3). As indicated in footnote 6, the State Committee filed its statement of organization approximately one month ago.

1 U.S.C. §431(8)(B)(xiii) and (9)(B)(x); 11 CFR 100.7(b)(18) and 100.8(b)(19); *see also*
2 Advisory Opinion 1988-33. However, the subsequent payment by the State Committee,
3 even if viewed by the donor and recipient as the same funds as the ballot access fee paid
4 by the Deckard Committee, does not fit within those exceptions. It was a payment from
5 the State Committee to the authorized committee and was not made for the purpose of
6 obtaining ballot access. Rather it was made for the purpose of making funds available for
7 the use of the Deckard campaign in the Senate campaign and, as such, was a gift made for
8 the purpose of influencing a Federal election. Even if it were asserted that the payment to
9 the Deckard Committee was merely the return of funds that the Deckard Committee was
10 obligated to pay to the State for the benefit of the State party, there was no legal
11 obligation for the party to send this amount back to the candidate or his committee.

12 In view of the fact that the payment by the State Committee was an excessive
13 contribution, the Deckard Committee may not retain the full amount of the payment and
14 must take remedial steps. It is unclear what the State party or Mr. Deckard has
15 considered to be the primary election date for Reform Party Federal candidates in
16 Florida.⁸ According to 11 CFR 100.2(c), individuals seeking office without nomination
17 by a major party may designate the primary date as either: (i) the day prescribed by
18 applicable State law as the last day to qualify for a general election ballot position, which
19 appears to be May 12 in Florida; (ii) the date of the last major party primary, caucus, or
20 convention in that State, which was September 5; or (iii) the date of the nomination by
21 the State party. 11 CFR 100.2(c)(4)(i)-(iii). Assuming you chose the second option as
22 the primary date, the payment may be considered a contribution for the primary. *See* 11
23 CFR 110.1(b)(2)(i), which states that a contribution not designated in writing for a
24 particular Federal election is considered to be made for the next election to the Federal
25 office after the contribution is made. In view of the fact that you are a candidate in the
26 general election for the U.S. Senate, the State party may send a signed written statement

⁸ None of the Reform Party Federal candidates in Florida have filed a pre-primary report, i.e., the report that a principal campaign committee would file no later than 12 days before a primary election and which covers activity as of the 20th day before the election. *See* 2 U.S.C. §434(a)(2)(A)(i); 11 CFR 104.5(a)(1)(i). (The newly registered State Committee has filed no reports yet.) The most recent reports filed by the candidates' committees were the July quarterlies which cover activity through June 30, 2000. Those reports denoted each receipt and disbursement entry as being for the primary election.

1 to the Deckard Committee redesignating \$1,000 of the \$2,542 for the general election. 11
2 CFR 110.1(b)(5)(ii)(B); *see also* 11 CFR 102.9(e). The remaining \$542, however, must
3 be refunded to the State Committee.

4 The Commission notes that more than sixty days has elapsed since the Deckard
5 Committee's receipt of the \$2,542 contributed by the State Committee. In view of the
6 fact that you filed this advisory opinion request in an expeditious manner after being
7 informed by the State committee treasurer that the July 1 payment was an excessive
8 contribution, the Commission will extend the time period for redesignation and refund of
9 the excessive portions of the contribution until sixty days after your receipt of the State
10 committee treasurer's August 25 letter. By the expiration of this time period, the Deckard
11 Committee must have received the redesignation from the State Committee of up to
12 \$1,000 and must have refunded any amount (other than the \$1,000 primary amount) that
13 was not redesignated.⁹ Until the redesignation is received from the State Committee and
14 until the amount to be refunded (at least \$542) is refunded to the State Committee, the
15 Deckard Committee must set those amounts aside in a separate bank account that may not
16 be used or must maintain sufficient funds in its regular account to make refunds of both
17 amounts. 11 CFR 103.3(b)(4).

18 This response constitutes an advisory opinion concerning the application of the
19 Act and Commission regulations to the specific transaction or activity set forth in your
20 request. See 2 U.S.C. §437f.

21 Sincerely,

22
23 Darryl R. Wold
24 Chairman
25

26 Enclosure (AOs 1998-2 and 1988-33)
27

⁹ According to Advisory Opinion 1998-2, which concluded that the Reform Party of the United States of America was a national committee of a political party and 29 State Reform parties qualified as State committees of a political party, the Reform Party of Florida was given State committee status under 2 U.S.C. §431(15). Assuming that the State Committee still maintains this status, it may use the \$542 for coordinated expenditures in connection with your Senate campaign, so long as it does not thereby exceed the limit for such expenditures set out at 2 U.S.C. §441a(d) and 11 CFR 110.7. *See* 2 U.S.C. §441a(d)(3)(A) and 441a(c); 11CFR 110.7(b)(2) and (c) and 110.9(c).